

RECORDATION NO. 9453-B Filed 1425

MAR 15 1979 - 11 40 AM

INTERSTATE COMMERCE COMMISSION

RECORDATION NO. 9453-D Filed 1425

MAR 15 1979 - 11 40 AM

INTERSTATE COMMERCE COMMISSION

RECORDATION NO. 9453-E Filed 1425

MAR 15 1979 - 11 40 AM

INTERSTATE COMMERCE COMMISSION

RECORDATION NO. 9453-C Filed 1425

MAR 15 1979 - 11 40 AM

INTERSTATE COMMERCE COMMISSION

RECORDATION NO. 9453-F Filed 1425

MAR 15 1979 - 11 40 AM

INTERSTATE COMMERCE COMMISSION

March 15, 1979

Secretary of the
Interstate Commerce Commission
Washington, D.C. 20423

Dear Sir:

Enclosed for recordation in the order listed below pursuant to 49 U.S.C. 11303 under I.C.C. Recordation No. 9453, please find the original and three counterparts of each of the following documents:

✓(1) First Amendment to Equipment Schedule executed by Rex Railways, Inc. and Skiva International, Inc. dated as of February 13, 1979 designating Skiva International, Inc. as the lessor under the Lease Agreement with respect to the Boxcars identified in the Equipment Schedule filed with the Interstate Commerce Commission on Feb. 26, 1979 at 11:20 AM under Recordation No. 9453-A.

✓(2) Lease Agreement Assignment from Skiva International, Inc., as Vendee, to the Provident Bank, as Assignee, dated as of February 13, 1979.

✓(3) Management Agreement between Skiva International, Inc., as Vendee, and Rex Railways, Inc., as Manager, dated as of February 13, 1979.

✓(4) Management Agreement Assignment between Skiva International, Inc., as Vendee, and the Provident Bank, as Assignee, dated as of Feb. 13, 1979.

✓(5) Assignment dated March 15, 1979 between Skiva International, Inc. as Owner, and C & H Railways, Ltd., as Assignee.

✓(6) Second Amendment to Equipment Schedule executed by Rex Railways, Inc., Skiva International, Inc., and C & H Railways, Ltd. dated as of March 14, 1979 designating C & H Railways, Ltd. as the lessor under the Lease Agreement with respect to the Boxcars identified in the Equipment Schedule filed with the Interstate Commerce Commission on Feb. 26, 1979 at 11:20 A.M. under Recordation no. 9453-A.

9-074A041
Date MAR 15 1979
Fee \$ 60.00
OC Washington, D. C.

Counterparts
Peter A. Khan

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1004

Also enclosed is a check for \$60.00 payable to Interstate Commerce Commission in payment of the fee for recording the above documents.

The names and addresses of the parties to the documents are as follows:

1. Rex Railways, Inc.
616 Palisade Avenue
Englewood, New Jersey 07632
2. Skiva International, Inc.
1350 Broadway
New York, New York 10018
3. The Provident Bank
One East Fourth Street
Cincinnati, Ohio 45202
4. C & H Railways, Ltd.
1350 Broadway
New York, New York 10018

The equipment covered by the documents consists of 100 70-ton 50'6" XM boxcars, having identifying marks of LCRC 2001 through and including 2100.

The 100 boxcars referred to above are subject to a Conditional Sale Agreement between Twitter, Inc., as Vendor, and Skiva International, Inc., as Vendee, dated as of February 13, 1979 recorded with the Interstate Commerce Commission on February 22, 1979 at 4:40 P.M., Recordation No. 10131.

Please return three stamped copies of each of the enclosed documents to:

Battle, Fowler, Jaffin,
Pierce & Kheel
280 Park Avenue
New York, N.Y. 10017

Attention: Thomas E. Kruger

Yours truly,

Twitter, Inc.

By 

Interstate Commerce Commission
Washington, D.C. 20423

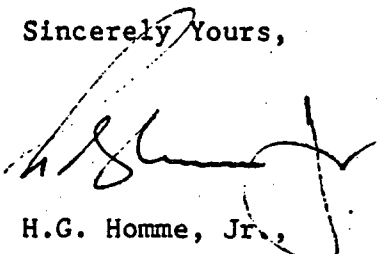
OFFICE OF THE SECRETARY

Thomas E. Kruger
Battle, Fowler, Jaffin, Pierce & Kheel
280 Park Avenue
New York, NY 10017

Dear Mr. Kruger:

The enclosed document(s) was recorded pursuant to the provisions of Section 20(c) of the Interstate Commerce Act, 49 U.S.C. 20(c), on March 15, 1979 at 11:40 am , and assigned recordation number(s) 10131-B, 10131-C, 10131-D, 10131-E and 10131-F

Sincerely Yours,



H.G. Homme, Jr.,
Secretary

Enclosure(s)

SE-30-T
(2/78)

RECORDATION NO. 9453-E Filed 1425

MAR 15 1979 - 11 40 AM

INTERSTATE COMMERCE COMMISSION

MANAGEMENT AGREEMENT ASSIGNMENT

DATED AS OF FEBRUARY 13, 1979

FROM

SKIVA INTERNATIONAL, INC.
VENDEE

TO

THE PROVIDENT BANK,
CINCINNATI, OHIO
ASSIGNEE

(COVERING UP TO 100 GENERAL PURPOSE BOX CARS)

Filed and recorded with the Interstate Commerce Commission
pursuant to 49 U.S.C. 11303 (formerly Section 20c of the
Interstate Commerce Act) on _____, 1979,
at _____, Recordation No. _____.

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MANAGEMENT AGREEMENT ASSIGNMENT dated as of February 13, 1979 given by SKIVA INTERNATIONAL, INC., a New York corporation (hereinafter called the "Vendee"), to THE PROVIDENT BANK, an Ohio banking corporation (hereinafter called the "Assignee").

WHEREAS, TWITTER, INC. a Delaware corporation (hereinafter called the "Vendor"), REX RAILWAYS, INC., a New Jersey corporation (hereinafter called "Manager"), and the Vendee have entered into a conditional sale agreement dated as of the date hereof (hereinafter called the "Conditional Sale Agreement") guaranteed by REX-NORECO, INC., a New Jersey corporation (hereinafter called the "Guarantor") covering the sale and delivery, on the conditions therein set forth, by the Vendor and the purchase by the Vendee of the railroad equipment described in Annex A to the Conditional Sale Agreement (said equipment being hereinafter called collectively the "Equipment" or "Units" and individually a "Unit");

WHEREAS, the Vendee is agreeing with the Manager to manage and maintain the Equipment pursuant to a Management Agreement dated as of the date hereof (hereinafter called the "Management Agreement");

WHEREAS, concurrently with execution of this Management Agreement Assignment, the Assignee is acquiring, pursuant to an agreement and assignment dated as of the date hereof (hereinafter called the "Assignment") the security title, rights, and interests of the Vendor under the Conditional Sale Agreement in the Units, all upon and subject to the terms and conditions of a finance agreement dated as of the date hereof among the Assignee, the Vendor, the Manager, the Vendee and the Guarantor (hereinafter called the "Finance Agreement"); and

WHEREAS, the Vendee has agreed to assign its right, title and interest in, to and under the Management Agreement to Assignee as collateral security for the performance of its duties and obligations under the Conditional Sale Agreement.

NOW, THEREFORE, WITNESSETH:

That in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration paid by the Assignee to the Vendee, the receipt of which is hereby acknowledged, and the mutual covenants herein contained, the parties hereby agree as follows:

SECTION 1. The Vendee hereby assigns, transfers, and sets over unto the Assignee, as collateral security for the payment and performance of the obligations of the Vendee under the Conditional Sale Agreement and the Finance Agreement, the Management Agreement and all of its rights, powers, privileges, and

remedies thereunder; provided, however, so long as no Event of Default (as defined in the Conditional Sale Agreement) under the Conditional Sale Agreement has occurred and is continuing, the Vendee is empowered to give any notice of a default under the Management Agreement to the Manager and/or to terminate said Management Agreement pursuant to its terms subject to the terms and provisions of Articles 11 and 15 of the Conditional Sale Agreement.

SECTION 2. Anything herein contained to the contrary notwithstanding, the Vendee shall, so long as there is no existing Event of Default under the Conditional Sale Agreement, be entitled to exercise all of the rights of the Vendee under the Management Agreement, subject to the terms and provisions of Articles 11 and 15 of the Conditional Sale Agreement.

SECTION 3. Anything herein contained to the contrary notwithstanding, the Vendee shall remain fully liable under the Management Agreement to perform all of its obligations thereunder, and the Assignee, its successors or assigns, shall have no obligation or liability under the Management Agreement by reason of or arising out of this Management Agreement Assignment, nor shall the Assignee, its successors, or assigns, be required or obligated in any manner to perform or fulfill any obligation of the Vendee under or pursuant to the Management Agreement, or to make any payment, or to make any inquiry as to the nature or sufficiency of any payment received by it, its successors or assigns, or to press or file any claim or to take any other action to collect or enforce the payment of any amounts which may have been assigned to it, its successors or assigns, or to which it, its successors or assigns, may have been entitled at any time or times, provided that the Assignee shall, as soon as practicable, fully inform the Vendee promptly in writing of any such matters of which it has knowledge.

SECTION 4. The obligations of the Vendee under the Management Agreement may be performed by the Assignee or its successors or assigns, without releasing the Vendee therefrom provided that any subsequent assignee is a bank or trust company of the United States with assets of at least \$35,000,000.

SECTION 5. The Vendee does hereby constitute the Assignee, its successors or assigns, its true and lawful attorney with full power (in the name of the Vendee or otherwise) to ask, require, demand, receive, compound, and give acquittance for any and all

moneys and claims for moneys resulting from the ownership, management, use, lease, or other operation of the Equipment, except such moneys paid by Assignee to the Manager under Section 6(a)(1)(F) of the Finance Agreement, and in connection therewith to draw any checks or other instruments or orders in connection therewith and to file any claims or take any action or institute any proceedings which the Assignee, its successors, or assigns, may deem to be necessary or advisable.

SECTION 6. All moneys resulting from the ownership, management, use, lease, or other operation of the Equipment, whether as rental payments, mileage charges, straight car hire payments or otherwise, shall be paid directly to the Assignee, its successors or assigns. All sums paid to the Assignee, its successors or assigns, shall be held or applied by the Assignee, its successors or assigns, in accordance with the applicable provisions of the Finance Agreement and Conditional Sale Agreement to satisfy the obligations of the Vendee; provided, that the Assignee shall promptly forward to the Vendee all sums expressly payable to the Vendee under such agreements.

SECTION 7. The Vendee agrees, that any time and from time to time, upon the written request of the Assignee, its successors or assigns, the Vendee will promptly and duly execute and deliver any and all such further instruments and documents as the Assignee, its successors or assigns, may reasonably request to enable the Assignee to obtain the full benefits of this Management Agreement Assignment and the rights and powers herein granted.

SECTION 8. The Vendee does hereby warrant and represent that it has not assigned or pledged, and hereby covenants that it will not assign or pledge, so long as this Management Agreement Assignment shall remain in effect, any of its rights, title or interest in or to the Management Agreement to anyone other than the Assignee, its successors or assigns and that it will not take or omit to take any action, the taking or omission of which might result in the alteration, amendment, modification, or impairment of the Management Agreement or this Management Agreement Assignment or of any of the rights created by either of such instruments except as expressly provided in the Management Agreement. Anything to the contrary herein notwithstanding, the Vendee may assign all of its rights under the ~~lease~~ and delegate all its duties thereunder to a wholly owned subsidiary provided such subsidiary assumes the duties and obligations of the Vendee thereunder, and under the Conditional Sale Agreement, and under any other documents or agreements relating to the Equipment. In the event of such an assignment and delegation, the Vendee will be released from any and all obligations thereunder, it being intended that such an assignment and delegation act as a novation with the Assignee. The Vendee does hereby ratify and confirm the Manage-

MANAGEMENT
AGREEMENT

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ment Agreement and does warrant and represent that such Management Agreement is in full force and effect as to it, and that the Vendee is not in default thereunder.

SECTION 9. The terms of this Management Agreement Assignment and all the rights and obligations hereunder shall be governed by the laws of the State of New York; provided, however, that the parties shall be entitled to all the rights conferred by 49 U.S.C. 11303 (formerly Section 20c of the Interstate Commerce Act), such additional rights arising out of the filing, recording, or depositing of the Management Agreement and this Management Agreement Assignment as shall be conferred by the laws of the several jurisdictions in which the Management Agreement or this Management Agreement Assignment shall be filed, recorded, or deposited, or in which any Unit shall be located, and any rights arising out of the markings on the Units.

SECTION 10. This Management Agreement Assignment may be executed in any number of counterparts, but the counterpart delivered to the Interstate Commerce Commission for recording and subsequently redelivered to the Assignee shall be deemed to be the original counterpart and all other counterparts shall be deemed duplicates thereof. Although this Management Agreement Assignment is dated as of the date first above written for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgements hereto annexed.

SECTION 11. This Management Agreement Assignment shall take effect immediately upon the execution hereof and the powers and authorities granted to the Assignee, its successors or assigns, herein, having been given for valuable consideration, are hereby declared to be irrevocable; provided, however, that when all of the Conditional Sale Indebtedness (as defined in the Conditional Sale Agreement) and all other sums payable under the Conditional Sale Agreement (whether owing to Assignee or any successor or assign of Assignee and/or to the Guarantor or any successor or assign of Guarantor by operation of subrogation or assignment) have been paid or discharged in accordance with the terms thereof, and all other covenants and agreements contained therein shall have been performed, all right, title and interest herein assigned shall revert to the Vendee and this Management Agreement Assignment shall terminate, and the Assignee agrees to execute, if requested by the Vendee, at the expense of the Vendee and without liability to the Assignee, an appropriate instrument in recordable form confirming the termination of this Management Agreement Assignment.

SECTION 12. In the event that the Assignee has actual notice of a default under the Management Agreement, the Assignee will give prompt notice thereof to the Vendee.

SECTION 13. The Vendee agrees to furnish to the Assignee copies of all notices, statements, documents, or schedules received by it under the Management Agreement, the Management Agreement Assignment, or the Conditional Sale Agreement and the Assignee shall cause similar copies to be delivered to the Vendee if received by the Assignee.

SECTION 14. It is expressly agreed by the parties that the Management Agreement is subordinate and junior in rank to the Conditional Sale Agreement and shall be subject to the remedies of the Vendor under the Conditional Sale Agreement as assigned by the Vendor to the Assignee pursuant to the Agreement and Assignment. The rights of the Vendor to the entire unpaid Conditional Sale Indebtedness, the payments required to be made into the Maintenance Escrow Account, and any other payments to be made to the Vendor under the Conditional Sale Agreement shall not be subject to any defense, setoff, counterclaim, or recoupment whatsoever arising out of any breach of any obligation of the Vendor with respect to the equipment nor subject to any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Vendee by the Vendor and any and all such obligations howsoever arising shall be and remain enforceable by the Vendee against and only against the Vendor, and not the Assignee.

IN WITNESS WHEREOF, the parties hereto, pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by duly authorized officials, and their respective corporate seals to be hereunto affixed and duly attested, all as of the date first above written.

SKIVA INTERNATIONAL, INC., Vendee

Witness:

Martin S. Summan

BY:

Albert Uhlir

THE PROVIDENT BANK, Assignee

Witness:

Paul V. Muehl

BY:

J. C. Long

STATE OF New York)
COUNTY OF New York) : SS

On this 14th day of March, 1979, before me personally appeared Albert Chehebar, to me personally known, who being by me duly sworn, says that he is the President of Skiva International, Inc., that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

(seal)

Martin S. Sussman
(Title of Officer)

My commission expires

March 30 1979

MARTIN S. SUSSMAN
Notary Public, State of New York
No. 30-4500640
Qualified in Nassau County.
Commission Expires March 30, 1979

STATE OF Ohio)
COUNTY OF Hamilton) : SS

On this 12th day of March, 1979, before me personally appeared Robert C. Lintz, to me personally known, who being by me duly sworn, says that he is the Executive Vice-President of The Provident Bank, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

(seal)

Paul V. Muething
(Title of Officer)

My Commission expires

PAUL V. MUETHING, Attorney at Law
Notary Public, State of Ohio
My Commission has no expiration date
Section 147.03 O. R. C.

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CONSENT AND AGREEMENT

The undersigned, REX RAILWAYS, INC., a New Jersey corporation (hereinafter called the "Manager"), the Manager named in the Management Agreement referred to in the foregoing Management Agreement Assignment (hereinafter called the "Management Agreement Assignment"), hereby (a) acknowledges receipt of a copy of the Management Agreement Assignment and (b) consents to all the terms and conditions of the Management Agreement Assignment and agrees that during the term of the Management Agreement Assignment:

(1) it will pay or cause to be paid all moneys resulting from the ownership, management, use, lease, or operation of the Equipment except such moneys paid by the Assignee to the Manager under Section 6(a)(1)(F) of the Finance Agreement (which moneys are hereinafter called the "Payments") due and to become due under the Management Agreement or otherwise in respect of the Units, directly to The Provident Bank, as the Assignee named in the Management Agreement Assignment at its main office at One East Fourth Street, Cincinnati, Ohio 45202, Attention: J. Lynn Brewbaker (or at such other address as may be furnished in writing to the Manager by the Assignee);

(2) the Assignee shall not, by virtue of the Management Agreement Assignment or this Consent and Agreement, be or become subject to any liability or obligation under the Management Agreement or otherwise; and

(3) the Management Agreement shall not, without the prior written consent of the Assignee, be terminated or modified, nor shall any action be taken or omitted by the Manager, the taking or omission of which might result in an alteration or impairment of the Management Agreement or the Management Agreement Assignment or this Consent and Agreement or of any of the rights created by any thereof.

(4) the rights of the parties to and under the Management Agreement shall be subordinate to and junior in rank to the rights of the Vendor under the Conditional Sale Agreement and to the rights of the Assignee, as assignee of the Vendor's rights.

This Consent and Agreement, when accepted by the Assignee by signing the acceptance at the end hereof, shall be deemed to be a contract, effective as of the date of acceptance, under the laws

of the State of New York and, for all purposes, shall be construed in accordance with the laws of said State.

(Corporate Seal)

REX RAILWAYS, INC.

BY: Robert W. Gruber, Pres.

Attest:

Paul V. Murphy

The foregoing Consent and Agreement is hereby accepted as of the 12th day of March, 1979.

THE PROVIDENT BANK, as Assignee

BY: [Signature]